

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0520**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On June 11, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for suitable work from March 29, 2020 to June 6, 2020 until the reason for the denial ended (decision # 82323). Claimant filed a timely request for hearing. On July 7, 2020, ALJ Murdock conducted a hearing, and on July 8, 2020 issued Order No. 20-UI-151978, modifying the administrative decision and concluding that claimant was ineligible for benefits from March 29, 2020 to July 4, 2020. On July 10, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Prior to March 2020, claimant was self-employed as a courier. In response to the COVID-19 viral pandemic, Governor Kate Brown issued an executive order<sup>1</sup> recommending or requiring citizens, businesses and organizations to take steps to prevent the spread of the virus. Claimant subsequently stopped working as a courier.

(2) Claimant filed an initial application for benefits on March 30, 2020. He claimed benefits for the period of March 29, 2020 to July 4, 2020, referred to as the weeks at issue.

(3) At the time of the hearing, claimant was over 66 years old and suffered from “heart problems,” high blood pressure, and diabetes. Audio record at 18:48.

**CONCLUSIONS AND REASONS:** Claimant was available for work.

At the hearing, a Department representative testified that claimant had indicated on his initial claim that he could not immediately begin full-time work because he was self-employed and was isolating to avoid

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<sup>1</sup> EAB has taken notice of the contents of this order, which are generally cognizable facts. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at: [https://www.oregon.gov/gov/Documents/executive\\_orders/eo\\_20-12.pdf](https://www.oregon.gov/gov/Documents/executive_orders/eo_20-12.pdf). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

COVID-19; and that claimant would not drop self-employment to accept full-time work. Audio record at 8:09. Claimant confirmed the same during his testimony. While claimant also suggested in his testimony that he would not work full-time for an employer because he already had adequate employment prior to the stay-at-home order, the record is clear that his current unemployment is the direct result of his decision to stay at home and avoid exposure.

To be eligible to receive benefits, unemployed individuals must be available for work during each week claimed as defined by OAR 471-030-0036(3) (December 8, 2019). ORS 657.155(1)(c). However, Oregon temporary rules set out unemployment insurance provisions applicable to the unique situations arising due to COVID-19 and the actions to slow its spread. OAR 471-030-0070(5) (effective March 8, 2020 through September 12, 2020) provides that a person will not be deemed unavailable for work because:

(a) They are staying in their home, or are quarantined, due to risk of exposure to, or spread of, the novel coronavirus at the advice of a health care provider or by advice issued by public health officials or by directive of a government official, even if their employer had work for them they could otherwise have performed;

\* \* \*

The order under review concluded that claimant was not available for work. The order applied OAR 471-030-0036(3) to this case, which typically requires an individual to be, in relevant part, “willing to work full time, part time, and accept temporary work opportunities,” and concluded that claimant’s unwillingness to accept or report to work with employers during the weeks at issue made him unavailable for work, and ineligible for benefits. Order No. 20-UI-151978 at 2. While the order is correct that claimant would typically be disqualified under OAR 471-030-0036(3) because he was not willing to accept full-time work, it fails to consider the effect of the temporary rule on such a scenario.

OAR 471-030-0070(5) essentially creates a temporary exception to the requirement that claimant be willing to accept full-time work under certain specific circumstances related to COVID-19. Claimant’s primary stated reason for being unwilling to work full-time for an employer—he is staying home at the directive of a government official in order to avoid exposure—falls within this exception. Reading the relevant passages of OAR 471-030-0036(3) and OAR 471-030-0070(5) otherwise would require claimant to be willing to work for an employer even while he has ceased his own self-employment activities at the directive of the Governor. Such a reading would frustrate the purpose of the temporary rule and the stay-at-home order by demanding that claimant must face the risk of exposure in order to qualify for benefits. Accordingly, claimant was not unavailable for work during the weeks at issue and is therefore not ineligible to receive unemployment insurance benefits.

**DECISION:** Order No. 20-UI-151978 is set aside, as outlined above.

J. S. Cromwell and S. Alba;  
D. P. Hettle, not participating.

**DATE of Service: August 11, 2020**

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



# Understanding Your Employment Appeals Board Decision

## English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

## Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

## Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

## Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

## Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

**Khmer**

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

**Laotian**

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

**Arabic**

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

**Farsi**

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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